STATE OF MICHIGAN

COURT OF APPEALS

EUGENE SATKOWIAK,

Plaintiff-Appellant,

v

CITY OF LINDEN,

Defendant-Appellee.

UNPUBLISHED
February 1, 2007

No. 265243
Genesee Circuit Court
LC No. 02-075241-CZ

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court judgment quieting title to disputed property in favor of defendant under the doctrine of adverse possession. We affirm. This appeal is being decided without oral argument. MCR 7.214(E).

"Actions to quiet title are equitable; therefore, the trial court's holdings are reviewed de novo." *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001). However, the court's factual findings are reviewed for clear error. *Id*. A factual finding is clearly erroneous when, although there is evidence to support it, this Court is left with the definite and firm conviction that a mistake has been made. *Gumma v D & T Constr Co*, 235 Mich App 210, 221; 597 NW2d 207 (1999).

"To establish adverse possession, the claimant must show that its possession is actual, visible, open, notorious, exclusive, hostile, under cover of claim or right, and continuous and uninterrupted for the statutory period of fifteen years." *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995).

> The term "hostile" as employed in the law of adverse possession is a term of art and does not imply ill will. Nor is the claimant required to make express declarations of adverse intent during the prescriptive period. Adverse or hostile use is use inconsistent with the right of the owner, without permission asked or given, use such as would entitle the owner to a cause of action against the intruder. [*Mumrow v Riddle*, 67 Mich App 693, 698; 242 NW2d 489 (1976).]

The claimant's hostile use must be known to the landowner or must be so open and notorious as to give the owner notice of the use. *Burns v Foster*, 348 Mich 8, 15; 81 NW2d 386 (1957). "Acts of ownership which openly and publicly indicate an assumed control or use

consistent with the character of the premises are sufficient." *Caywood v Dep't of Natural Resources*, 71 Mich App 322, 331; 248 NW2d 253 (1976).

The evidence showed that Lemuel Laing, a predecessor in interest, donated a portion of his land to defendant for the construction and maintenance of a municipal well and pump house. Defendant took control over the donated land, completed construction of the well and pump house in 1962, and has exclusively maintained and controlled the land for that purpose since that time. Apparently due to oversight, a deed transferring the land to defendant was never recorded. Thus, when plaintiff acquired Laing's land in 1983, the donated land was included in his deed and was also included in plaintiff's tax assessments. "One who alleges adverse possession bears a heavy burden to upset a title of record[.]" *Rozmarek v Plamondon*, 419 Mich 287, 294; 351 NW2d 558 (1984). The payment of taxes is not conclusive on the issue of ownership but does create a rebuttable presumption in favor of ownership by the titleholder. *Id*. at 293; *Bachus v West Traverse Twp*, 107 Mich App 743, 748-749; 310 NW2d 1 (1981). However, this presumption may be overcome by other evidence of adverse possession. *Id*. at 749. The overwhelming evidence here was sufficient to rebut any presumption of private ownership by plaintiff. The trial court correctly determined that defendant had acquired ownership by adverse possession.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Jessica R. Cooper